

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk & Western Railway Company violated the current Agreement of January 1, 1943, (former Virginian) as subsequently amended, when on August 25, 1980, they failed to call the regularly assigned wreck crew to perform wrecking service near Elmore-Mullens, WV Terminal, a point on the Norfolk & Western Railway Company, but instead called two (2) employees from another craft, Maintenance of Way, including one (1) substitute derrick wreck car. Furthermore, Carrier permitted one (1) of the M of W employees to operate the Clamshell, which was converted into a substitute derrick wreck car, by removing cotter key and bolt from boom, including the bucket, attaching hook(s) and various other attachments to perform wrecking service.
2. That the Norfolk & Western Railway Company failed to call the three (3) regularly assigned members of the wreck crew, including wreck engineer(s) to operate the substitute wreck car.
3. That the Norfolk & Western Railway Company did violate the rules of the current Agreement, particularly, Rules Nos. 113 and 114, including Article VII of the December 4, 1975 Agreement, when they called and used employees, other than carmen, to perform carmen's duties relative to wrecking service.
4. Prior to the December 4, 1975 Agreement, the wreck crew consisted of two (2) carmen, one (1) helper carman as groundman, and one (1) carman derrick engineer.
5. That because of such violations and capricious actions, the Norfolk & Western Railway Company be ordered to compensate Carmen Elgin J. Clark and C. W. McKinney, nine (9) hours each at the overtime rate of pay and Carmen C. C. Burnette, H. R. Karnes and Carman Helper W. G. Wolfe, one (1) hour each at the applicable overtime rate of pay, account, of loss suffered due to such violations, and restore the same number of regularly assigned members of the wreck crew as was in effect December 4, 1975.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to dispute waived right of appearance at hearing thereon.

In Second Division Award Nos. 10102, 10134, 10164 and 10165 involving the same parties, the same rules and virtually the same fact patterns, the Board held that Carrier's actions were not violative of Rule Nos. 113 and 114 including Article VII of the December 4, 1975 Agreement when it failed to call the Claimants named in those cases to perform wrecking service work. In the dispute herein, we find nothing in the detailed facts and arguments presented that would warrant a variant interpretation. The aforesaid Awards are controlling. There was plainly no Agreement violation when Carrier failed to call Claimants to perform the wrecking service work on August 25, 1980 near the Elmore-Mullens, West Virginia Terminal and, as such, the claim must be denied. The principle of Res Judicata must be observed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1985.